

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

RICHARD A. ADAMS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION FILE NO.
	)	1:05-CV-3308-TWT
IBM CORP.	)	
	)	
Defendant.	)	

ANSWER

COMES NOW Defendant IBM Corp. ("IBM") and hereby files this answer to Plaintiff's Complaint, and states as follows:

1.

IBM denies the allegations contained in paragraph 1 of Plaintiff's Complaint.

2.

IBM denies the allegations contained in paragraph 2 of Plaintiff's Complaint.

## **ADDITIONAL DEFENSES**

### **FIRST DEFENSE**

The Complaint should be dismissed, in whole or in part, because Plaintiff has failed to state a claim against IBM upon which relief can be granted.

### **SECOND DEFENSE**

The Complaint is barred, in whole or in part, by estoppel and waiver.

### **THIRD DEFENSE**

The Complaint is barred, in whole or in part, because Plaintiff's claims are preempted by ERISA, 29 U.S.C. §§ 1001-1461.

### **FOURTH DEFENSE**

The Complaint is barred, in whole or in part, by the applicable statute of limitations.

### **FIFTH DEFENSE**

The Complaint is barred, in whole or in part, because Plaintiff failed to exhaust the administrative remedies under the Plan.

**SIXTH DEFENSE**

To the extent Plaintiff seeks compensatory damages for his claims under ERISA, the claims are barred because such damages are not available under ERISA.

**SEVENTH DEFENSE**

Any damages allegedly sustained by Plaintiff are the result of his own actions or omissions and were not proximately cause by IBM.

**EIGHTH DEFENSE**

To the extent Plaintiff has failed to mitigate any alleged damages, those damages must be reduced.

**NINTH DEFENSE**

IBM reserves the right to amend its answer to raise additional defenses or counterclaims which may become known during this action.

WHEREFORE, having fully answered the Complaint, IBM respectfully requests:

- a. Judgment be entered in its favor and this action be dismissed with prejudice;
- b. Judgment be entered in its favor for all costs and attorneys' fees incurred in its defense of this action; and

c. It has and recover such other and further relief as the Court deems just and proper.

Respectfully submitted this 5th day of January, 2006.

s/Stephen X. Munger, Esq.  
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**CERTIFICATION**

I hereby certify that this document has been prepared in Book Antiqua font, 13 point, in compliance with LR 5.1C of this Court.

s/Stephen X. Munger, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2006 I electronically filed the **ANSWER** with the Clerk of Court using the CM/ECF system. I also hereby certify that I have mailed the foregoing document via United States Postal Service Certified Mail Return Receipt Requested to the following non-CM/ECF *pro se* plaintiff.

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s/Stephen X. Munger

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